COMMITTEE ON LEGISLATIVE RESEARCH
OVERSIGHT DIVISION

FISCAL NOTE

L.R. No.: 4861-01
Bill No.: SB 918
Subject: Health Care; Pharmacy; Insurance - Medical
Type: Original
Date: March 16, 2010

Bill Summary: Establishes provisions regarding pharmacy benefit managers.

FISCAL SUMMARY

ESTIMATED NET EFFECT ON GENERAL REVENUE FUND			
FUND AFFECTED	FY 2011	FY 2012	FY 2013
General Revenue	(Unknown exceeding $50,000)	(Unknown exceeding $100,000)	(Unknown exceeding $100,000)
Total Estimated Net Effect on General Revenue Fund	**(Unknown exceeding $50,000)**	**(Unknown exceeding $100,000)**	**(Unknown exceeding $100,000)**

ESTIMATED NET EFFECT ON OTHER STATE FUNDS			
FUND AFFECTED	FY 2011	FY 2012	FY 2013
Road	(Unknown exceeding $50,000)	(Unknown exceeding $100,000)	(Unknown exceeding $100,000)
Insurance Dedicated	($54,365)	($63,898)	($65,524)
Other	(Unknown exceeding $50,000)	(Unknown exceeding $100,000)	(Unknown exceeding $100,000)
Total Estimated Net Effect on Other State Funds	**(Unknown exceeding $154,365)**	**(Unknown exceeding $263,898)**	**(Unknown exceeding $265,524)**

Numbers within parentheses: ( ) indicate costs or losses.
This fiscal note contains 12 pages.

ESTIMATED NET EFFECT ON FEDERAL FUNDS			
FUND AFFECTED	FY 2011	FY 2012	FY 2013
Federal	(Unknown exceeding $50,000)	(Unknown exceeding $100,000)	(Unknown exceeding $100,000)
Total Estimated Net Effect on All Federal Funds	**(Unknown exceeding $50,000)**	**(Unknown exceeding $100,000)**	**(Unknown exceeding $100,000)**

ESTIMATED NET EFFECT ON FULL TIME EQUIVALENT (FTE)			
FUND AFFECTED	FY 2011	FY 2012	FY 2013
Insurance Dedicated	1	1	1
Total Estimated Net Effect on FTE	**1**	**1**	**1**

☒ Estimated Total Net Effect on All funds expected to exceed $100,000 savings or (cost).

☐ Estimated Net Effect on General Revenue Fund expected to exceed $100,000 (cost).

ESTIMATED NET EFFECT ON LOCAL FUNDS			
FUND AFFECTED	FY 2011	FY 2012	FY 2013
Local Government	**$0**	**$0**	**$0**

FISCAL ANALYSIS

ASSUMPTION

Officials from the **Office of State Courts Administrator**, **Department of Health and Senior Services,** and **Department of Mental Health** assume the proposal will have no fiscal impact on their organizations.

Officials from the **Missouri Department of Conservation (MDC)** state the proposed legislation would not appear to have a fiscal impact on MDC funds.

Officials from the **Office of Attorney General (AGO)** assume any potential costs arising from this proposal can be absorbed with existing resources.

Officials from the **Department of Public Safety - Missouri State Highway Patrol** defer to the Missouri Department of Transportation for response regarding the potential fiscal impact of this proposal on their organization.

Officials from the **Office of Secretary of State (SOS)** state the fiscal impact for this proposal is less than $2,500. The SOS does not expect that additional funding would be required to meet these costs. However, the SOS also recognizes that many such bills may be passed by the General Assembly in a given year and that collectively the costs may be in excess of what the SOS can sustain within its core budget. Therefore, the SOS reserves the right to request funding for the costs of supporting administrative rules requirements should the need arise based on a review of the finally approved bills signed by the Governor.

Officials from the **Department of Social Services - MO HealthNet Division (MHD)** state this proposal, which adds four (4) new sections to Chapter 376, deals with life, health and accident insurance. Therefore, the MHD assumes that the provisions in this proposal do not apply to the MHD. However, if these sections did apply to the MHD, there would be a significant, unknown cost greater than $50 million.

Officials from the **Department of Insurance, Financial Institutions, and Professional Registration (DIFP)** state the department is requesting one (1) Investigator II FTE to handle consumer complaints and investigations on switch communication grievances. The drafting of rules and creation of the switch communication form can be handled with current staffing levels.

There will be an unknown increase in the cost of the department's IRO (Independent Review Organization) contract to make determinations on formulary changes and impact on an individual's health. Should the cost increase beyond what the DIFP's current expense and equipment appropriation can cover, the department would request additional E&E appropriation through the budget process.

ASSUMPTION (continued)

Depending on the number of switch communications submitted for review, the DIFP may require additional staff to handle reviews within the sixty day time-frame allowed. If this occurs, the DIFP will request additional FTE through the budget process.

The DIFP estimate FY 11 costs of $54,365; FY 12 costs of $63,898; and FY 13 costs of $65,524 to the Insurance Dedicated Fund.

Officials at the **Missouri Department of Transportation (DOT)** assume Section 376.388 regarding pharmacy benefits manager (PBM) proposes that the PBM will not automatically enroll or passively enroll the pharmacy in a contract, or modify an existing contract without affirmation from the pharmacy or pharmacist. The PBM will not discriminate between pharmacies or pharmacists on the basis of co-payments or days of supply. The PBM will, however, remit to the covered entity each individual claim, prescription number, NDC number, quantity and amount the PBM paid each pharmacy/pharmacist, amount charged to the person/business/entity, as well as itemize by individual claim the amounts the PBM actually paid each pharmacy/pharmacist. Further, the PBM will use the same NDC price used when calculating the reimbursement to the dispensing pharmacy, and when an insured presents a prescription to a pharmacy in the PBM's network, the PBM will not reassign the prescription to be filled by another pharmacy.

The DOT/Missouri State Highway Patrol (MHP) Medical Plan uses a PBM for its prescription drug plan and review of the proposed legislation stated that this section would apply to the DOT/MHP Medical Plan. This section would impact the medical plan since the cost of prescriptions would increase due to the fact that even though a pharmacy may offer a prescription at a lower price, the PBM cannot have that pharmacy fill the prescription if the insured did not present the prescription at the lower-cost pharmacy.

Independent Pharmaceutical Consultants, Inc. (IPC) reviewed the legislation on behalf of the DOT/MHP Medical Plan. According to IPC's review, the Plan could not establish different coverage levels for one drug or group of drugs from other drugs or group of drugs. The Plan designed several coverage rules or benefit designs that allows the Plan to cover certain drugs for their intended use and according to established clinical guidelines, so the DOT can afford to cover these drugs under the benefit. In addition, this is a practice that is allowed in the federal Medicare program. If the DOT is not allowed to take advantage of these industry practices, the Plan and member cost would generally increase, and specifically, it would also affect the DOT's ability to continue to manage the cost of its Medicare retiree plan.

It is difficult to estimate the actual cost since the DOT is not sure of the cost of the benefit if it is NOT allowed to do things like this, but it might be as much as 1% to 2% of the total drug spend (approximately $254,649 to $509,298) each year on a ongoing basis. This is a very rough

ASSUMPTION (continued)

estimate. The Plan is comprised of 23% Patrol participation and 77% DOT participation; therefore, the impact to MHP would range from $58,570 to $117,139 per calendar year and the impact for DOT would be $196,080 to $392,160 per calendar year. Of this cost, the participants of the Plan would pay 30% coinsurance, which could greatly increase their financial liability.

Section 376.1460 proposes that a patient, plan sponsor, provider, employer, will be notified if there is a proposed change in a prescription. The patient will be notified of why the switch is proposed and his/her rights for refusing the change, identify both the original and the proposed medications, explain the cost sharing changes, given a copy of "switch communication," explain any financial incentives that maybe provided to the prescribing health care professional. The plan sponsor will be informed of the cost or the recommended medication and the originally prescribed medication. Any communications to providers will show the financial incentives to benefits, and direct the prescriber to tell the patient of the same. Prescribing practitioners will be sent all switch communication. Insurance payers (employers as well) will be notified of medication switches, including health incentives.

This section above would most likely impact the DOT/MHP Medical Plan because there is a potential that a patient, if allowed to chose the prescription, would choose a more expensive one, which will increase the cost to the medical plan.

Officials from the **Missouri Consolidated Health Care Plan (HCP)** state the HCP has worked consistently to increase generic utilization and the use of lower-cost therapeutically equivalent prescription drugs by members of the plan. The HCP's 2009 generic fill rate was 76.4%, up from 74.7% in 2008. This 1.7% increase from 2008 to 2009 saved the HCP $2,851,297 in prescription drug costs. Every 1% increase in generic utilization translates into a 1.8% plan cost savings.

The HCP utilizes several different clinical programs in order to achieve these goals. These programs include Prior Authorization, Step Therapy, Quantity Level Limits, and Call4Generics. In 2009, these programs saved the HCP over $9 million.

With thousands of HCP members participating in step therapy, prior authorization and generic substitution programs each year, costs associated with "switch communication" would be passed directly to HCP by the pharmacy benefits manager (PBM). In 2009, physicians modified their written prescriptions 2,109 times for prior authorization and 10,424 times for step therapy. Assuming three separate pieces of communication would be sent for each instance a prescription is modified by a physician, the HCP would incur over $15,000 each year in postage costs.

Using the assumptions above, this proposal would require an additional appropriation to FY 11 of up to $9,070,697 and each subsequent year thereafter.

ASSUMPTION (continued)

Based on the uncertainty that the HCP will actually experience a significant decrease in the use of generic drugs as a result of this legislation, **Oversight** assumes the HCP will incur an increase in costs of an unknown amount exceeding $100,000 annually.

Officials at the **University of Missouri** estimate an additional $1.5 million per year in costs could be incurred as a result of diminishing the effectiveness of UM's step-therapy program. Modification of 376.1464.2 to clarify that the pharmacy benefit manager or employer retain the final decision on coverage should eliminate this potential cost.

Section 376.388.1(3) would preclude UM pharmacies from offering lower costs to UM employees and retirees. Modification of this section to exempt employer owned pharmacies from this provision would eliminate this potential cost which, at this time, has not been valued.

Section 376.388.2 would preclude employers from establishing mandatory home delivery/mail order coverage for maintenance prescription drugs. UM has considered this approach in the past and, along with other employers, would prefer that this provision not apply to home delivery/mail order coverage for maintenance medications.

Oversight assumes the potential costs estimated by the University of Missouri would not be picked up by the state.

Oversight assumes the provisions of this proposal would become effective January 1, 2011 when state health insurance plan changes become effective.

Oversight notes Section 376.1462 provides for fines not to exceed twenty-five thousand for certain violations of Section 376.1460. **Oversight** assumes pharmacy benefits managers will try to comply with the legislation so as not to incur the fines. As a result, **Oversight** assumes income from fines will be minimal and is not presenting fine income in the fiscal note.

FISCAL IMPACT - State Government	FY 2011 (6 Mo.)	FY 2012	FY 2013
GENERAL REVENUE FUND			
Costs - HCP			
Increase in state share of health insurance premiums	(Unknown exceeding $50,000)	(Unknown exceeding $100,000)	(Unknown exceeding $100,000)
ESTIMATED NET EFFECT ON GENERAL REVENUE FUND	**(Unknown exceeding $50,000)**	**(Unknown exceeding $100,000)**	**(Unknown exceeding $100,000)**
ROAD FUND			
Costs - DOT			
Increase in state share of health insurance premiums	(Unknown exceeding $50,000)	(Unknown exceeding $100,000)	(Unknown exceeding $100,000)
ESTIMATED NET EFFECT ON ROAD FUND	**(Unknown exceeding $50,000)**	**(Unknown exceeding $100,000)**	**(Unknown exceeding $100,000)**
INSURANCE DEDICATED FUND			
Costs - DIFP			
Personal service (1 FTE)	($30,718)	($37,783)	($38,727)
Fringe benefits	($16,109)	($19,813)	($20,308)
Equipment and expense	($7,538)	($6,302)	($6,489)
Total Costs - DIFP	($54,365)	($63,898)	($65,524)
FTE Change - DIFP	1.0 FTE	1.0 FTE	1.0 FTE
ESTIMATED NET EFFECT ON INSURANCE DEDICATED FUND	**($54,365)**	**($63,898)**	**($65,524)**
Estimated Net FTE Change on Insurance Dedicated Fund	1.0 FTE	1.0 FTE	1.0 FTE

FISCAL IMPACT - State Government	FY 2011 (6 Mo.)	FY 2012	FY 2013
OTHER STATE FUNDS			
Costs - HCP			
Increase in state share of health insurance premiums	(Unknown exceeding $50,000)	(Unknown exceeding $100,000)	(Unknown exceeding $100,000)
ESTIMATED NET EFFECT ON OTHER STATE FUNDS	**(Unknown exceeding $50,000)**	**(Unknown exceeding $100,000)**	**(Unknown exceeding $100,000)**
FEDERAL FUNDS			
Costs - HCP			
Increase in state share of health insurance premiums	(Unknown exceeding $50,000)	(Unknown exceeding $100,000)	(Unknown exceeding $100,000)
ESTIMATED NET EFFECT ON FEDERAL FUNDS	**(Unknown exceeding $50,000)**	**(Unknown exceeding $100,000)**	**(Unknown exceeding $100,000)**

FISCAL IMPACT - Local Government	FY 2011 (6 Mo.)	FY 2012	FY 2013
	$0	**$0**	**$0**

FISCAL IMPACT - Small Business

The proposal may impact small businesses that provide pharmacy benefit coverage for employees if insurers increase premiums as a result of this legislation.

FISCAL DESCRIPTION

This proposal establishes provisions relating to pharmacy benefits and pharmacy benefit managers (PBMs).

PHARMACY BENEFIT AND PHARMACY BENEFIT MANAGERS

This proposal prohibits pharmacy benefit managers from automatically enrolling a pharmacy in a contract, modifying an existing contract without affirmation from the pharmacy, or requiring a pharmacy or pharmacist to participate in one PBM contract in order to participate in another contract. Nor shall a PBM discriminate between in-network pharmacies or pharmacists on the basis of copayments or days of supply unless such pharmacy declines to fill such prescriptions at the price allowed to other in-network pharmacies for such prescription.

A PBM is also prohibited from reassigning a prescription that has been presented in one pharmacy to another pharmacy in the PBM's network. When the PBM contacts the prescribing health care practitioner to affirm or modify the original prescription, the affirmed or modified prescription shall be filled at the in-network pharmacy of the patient's choice to which the insured presented the original prescription. This provision is not applicable to any prescribed specialty drug with a specific formulation.

SWITCH COMMUNICATIONS

This proposal establishes procedures for governing switch communications. A switch communication is defined as a communication from a health insurance carrier or PBM to a patient or the patient's physician that recommends a patient's medication be switched by the original prescribing practitioner to a different medication than the medication originally prescribed.

The switch communication shall, among other requirements, explain any financial incentives that may be provided to, or have been offered to, the prescribing practitioner by the health carrier or PBM that could result in the switch to the different drug. In addition, the communication shall explain any clinical effects that the proposed medication may have on the patient which are different than those of the originally prescribed medication. The patient shall also be informed of any cost sharing changes for which the patient shall be responsible and advise the patient of his or her rights to discuss any proposed switch with the patient's prescribing practitioner.

Any time a patient's medication is recommended to be switched to a medication other than that originally prescribed by the prescribing practitioner, a switch communication shall be sent to the patient. Also, information shall be sent to the plan sponsor or health carrier using a PBM

FISCAL DESCRIPTION (continued)

regarding, among other information, the recommended medication and the cost, shown in currency form, of the originally prescribed medication. These provisions do not apply to generic substitutions allowed under current law in Section 338.056, RSMo, unless such substitution results in a higher cost to the patient or health insurance payer.

All health carriers and PBMs shall submit the format and language to the Department of Insurance, Financial Institutions, and Professional Registration for approval. The department shall have sixty days to review and inform the health carrier or PBM that the format and language of the switch communication either does or does not comply with the statute. If the department finds noncompliance with the statute, the department shall cite specific reasons for such decision.

The department shall promulgate rules governing switch communications. Such rules shall include procedures for verifying the accuracy of any switch communications from health carriers and PBMs to ensure that such switch communications are truthful, accurate, and not misleading. Also, except for a substitution due to the Food and Drug Administration's withdrawal of a drug for prescription, such rules shall include a requirement that all switch communications bear a prominent notification on a first page clearly indicating the switch communication is not a product safety notice.

This proposal also specifies that a PBM owes a fiduciary duty to a covered entity and shall discharge that duty in accordance with the provisions of state and federal law. A PBM shall notify the covered entity in writing of any activity, policy, or practice of the PBM that directly or indirectly presents any conflict of interest with the duties imposed by this proposal.

PHYSICIAN OVERRIDE OF MEDICATION RESTRICTIONS

This proposal governs the practice by health carriers and pharmacy benefit managers of restricting medications for the treatment of any medical condition by requiring step therapy or a fail first protocol. A prescribing practitioner may override such restrictions if the prescriber can demonstrate, based on sound clinical evidence, that the step therapy or fail first protocol treatment has been ineffective in treating the patient's disease or medical condition, is expected to be ineffective, or is likely to cause an adverse reaction. The duration of any step therapy or fail first protocol cannot last longer than 14 days when such treatment is deemed clinically ineffective by the prescribing physician. However, when the health carrier or PBM can show, through sound clinical evidence, the originally prescribed medication is likely to require more than two weeks to provide any relief to the patient, the step therapy or fail first protocol may be extended up to seven additional days.

HWC:LR:OD

FISCAL DESCRIPTION (continued)

Nothing in the proposal shall require coverage for a condition specifically excluded by the policy which is not otherwise mandated by law.

This legislation is not federally mandated, would not duplicate any other program and would not require additional capital improvements or rental space.

SOURCES OF INFORMATION

Office of Attorney General
Office of State Courts Administrator
Department of Insurance, Financial Institutions, and Professional Registration
Department of Mental Health
Department of Health and Senior Services
Department of Social Services
Missouri Department of Transportation
Department of Public Safety -
    Missouri State Highway Patrol
Missouri Consolidated Health Care Plan
Missouri Department of Conservation
Office of Secretary of State
University of Missouri

Mickey Wilson

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